IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

W.P. 90 OF 2000

PETITION UNDER ARTICLE 226 & 227

CONSTITUTION OF INDIA.

Petitioner:- Ramraj Ojha S/o Udainath Ojha,
R/o Govt.Educational College
Campus, Tarbahar Chowk,
BILASPUR.

Respondent:-1) Collector,
BILASPUR (Chhattisgarh)

2) Principal, Govt.Educational college
BILASPUR(Chhattisgarh)

3) State of Chhattisgarh
through- Collector, Bilaspur

1. Particulars of the petitioner:-

As above in cause title

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

76

मामला क्रमांक W.P. 90/2000 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

21.8.2001 :

Mr. Sanjay S.Agrawal for the petitioner.

Mr.Gautam Bhaduri for the State.

Heard.

The order impugned is dated 13.5.2000 by which the services of the writ petitioner were terminated. The said order was issued by Collector,Bilaspur. The impugned order is stated to have been issued on the basis of a committee report submitted as regards illegality of the initial appointment of the writ petitioner. Mr. Agrawal,submits that the impugned order is not at all tenable in law firstly because the same could not have been passed during the pendency of writ petition No. 1547/98 regarding the same issue of the termination of the writ petitioner from service.

2. A few facts pertaining to the present case may be narrated. The writ petitioner was given appointment as Hostel Servant by order dt. 20.2.92 for a period of ~~90~~ 89 days. However,the said order of appointment was extended from time to time by issuing order of extension and the writ petitioner continued as Hostel Servant continuously upto 31.7.94. However, on 1.8.94 the services of the petitioner were terminated by respondent no.2, Principal, Government Educational College

...2 [पीछे देखिये

आदेश पत्रक (पुर्वानुबद्ध)

आदेश क्र० दिनांक आदेश क्रमांक सहित	..2.. आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bilaspur. The said order of termination was impugned before the Labour Court,Bilaspur. The Presiding Officer Labour Court by order dated 27.2.97 accepted the contention of the writ petitioner and he was ordered to be re-instated with back wages. Accordingly,the petitioner was re-instated. While continuing after the order of re-instatement as hostel servant another order of termination was again issued on 5.2.2000 by respondent no.2. However,the said order of termination was cancelled by the concerned authority and the writ petitioner was restored to his earlier service conditions. While continuing in the post of hostel servant,after the order of termination was cancelled as stated above, the order impugned in the present writ petition i.e. 90 / 2000 came to be issued by the Collector,Bilaspur.

3. Shri Agrawal ,learned counsel for the petitioner submits that the order of termination dt. 13.5.2000 is not sustainable among other grounds because no opportunity of being heard was given to the writ petitioner before the order of termination was issued. It is also stated by the learned counsel that in fact the representation was submitted to the competent authority stating that the said order of termination could not have been issued in as much as writ petition No. 1547/98 was pending as regards the service conditions of the writ petitioner .

4. It may be stated that against the order of re-instatement issued by the learned Labour Court,the State

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

77

आदेश पत्रक

मामला क्रमांक ..... सन् 200

...3... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

preferred the aforesaid writ petition challenging the validity of the order of the labour court.

5. Mr. Gautam Bhaduri, learned ~~panel lawyer~~ Govt. Advocate appearing for the respondent / State submits that this writ petition is not maintainable simply because there is an alternative remedy available to the writ petitioner. According to Mr. Bhaduri, the writ petitioner ought to have approached the Labour Court. Mr. Agrawal submits that in view of the pendency of the earlier petition in which the same order of termination was at issue, the impugned order of termination issued on 13.5.2000 was un-called for and the same was issued without any jurisdiction to do so. In such a situation it is submitted that there is no bar for the writ petitioner to approach this court for exercise of jurisdiction under Article 226 of the Constitution of India.

6. In my view though normally the petitioner could have approached the labour court for an order of termination issued against him, in the present situation since the earlier order of termination was at issue in the earlier writ petition preferred by the State, it can not be said that the petitioner could not have come before this court invoking

...4

[पीछे देखिये

आदेश का दिनांक आदेश क्रमांक सहित	..4.. आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

power under Article 226 of the Constitution of India, in asmuch as the main issue of termination was already raised in the writ petition no. 1547/98 which is yet to be decided.

7. Upon careful perusal of the various orders passed in the present case and the averments mentioned in the writ petition and after hearing Shri Sanjay S. Agrawal counsel for the writ petitioner as well as Mr.Gautam Bhaduri,learned panel lawyer appearing for the State, I am of the view that the writ petitioner has made-out a case for interference by this court by invoking jurisdiction under Article 226 of theConstitution of India ~~where~~ as the same issue of termination of service was raised in an earlier petition and the same is still pending for disposal,the impugned order of termination dated 13.5.2000 could not have been issued by the competent authority and that too without affording any opportunity of hearing.

8. In the result, this petition is allowed. The impugned order of termination dt. 13.5.2000 issued by collector is quashed. The petitioner shall be dealt-with in accordance with the provisions of section 17-B of the Industrial disputes Act.

Sd/-
Chief Justice

Jyotishi

GRPRJ—FS/311—1/2001—50,000.